

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

2004 AUG 19 AM 11:57

FIREMAN'S FUND INSURANCE COMPANY,
As Subrogee of Hodan Properties, Inc.
Plaintiff

Vs.

FIRE SYSTEMS, INC.,
FIRE SUPPRESSION SYSTEMS OF
NEW ENGLAND, INC.,
PRO CON, INC.
and BRIERE & PAQUETTE, INC. f/k/a
PAQUETTE ELECTRIC CO., INC.,
Defendants

U.S. DISTRICT COURT
DISTRICT OF MASS

CASE NUMBER 04-11578 PBS

**ANSWER OF THE DEFENDANT, FIRE SYSTEMS, INC., TO
THE PLAINTIFF'S COMPLAINT**

The defendant, Fire Systems, Inc., responds to the allegations contained in the plaintiff's complaint, paragraph by paragraph, as follows:

FIRST DEFENSE

1. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 1 of the plaintiff's complaint.
2. The defendant admits the allegations contained in paragraph 2 of the plaintiff's complaint.
3. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 3 of the plaintiff's complaint.
4. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 4 of the plaintiff's complaint.
5. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 5 of the plaintiff's complaint.

JURISDICTION AND VENUE

6. The defendant neither admits nor denies the allegations contained in paragraph 6 of the plaintiff's complaint for the reason that no response is required.

7. The defendant neither admits nor denies the allegations contained in paragraph 7 of the plaintiff's complaint for the reason that no response is required.

GENERAL ALLEGATIONS

8. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 8 of the plaintiff's complaint.

9. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 9 of the plaintiff's complaint.

10. The defendant admits that at all times relevant to the complaint, it was engaged in business for inspecting and testing fire alarm and fire suppression systems. The defendant denies the remaining allegations contained in paragraph 10 of the plaintiff's complaint.

11. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 11 of the plaintiff's complaint.

12. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 12 of the plaintiff's complaint.

13. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 13 of the plaintiff's complaint.

14. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 14 of the plaintiff's complaint.

15. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 15 of the plaintiff's complaint.

16. The defendant is without knowledge or sufficient information to form a belief as to the truth of the allegations contained in paragraph 16 of the plaintiff's complaint.

17. The defendant neither admits nor denies the allegations contained in paragraph 17 of the plaintiff's complaint for the reason that said allegations calls for a legal conclusion. To the extent the allegations refer to a policy, said policy being a written document, speaks for itself.

COUNT I

18. The defendant repeats and reavers its answers to the plaintiff's complaint as if expressly rewritten and set forth herein.

19. The defendant neither admits nor denies the allegations contained in paragraph 19 of Count I of the plaintiff's complaint for the reason that the agreement referred to, being a written document, speaks for itself.

20. (a) The defendant denies the allegations contained in paragraph 20(a) of Count I of the plaintiff's complaint.

(b) The defendant denies the allegations contained in paragraph 20(b) of Count I of the plaintiff's complaint.

21. The defendant denies the allegations contained in paragraph 21 of Count I of the plaintiff's complaint.

WHEREFORE, the defendant denies that the plaintiff is entitled to the relief sought and further denies that the plaintiff is entitled to recover in any amount or form.

COUNT II

22. The defendant repeats and reavers its answers to the plaintiff's complaint as if expressly rewritten and set forth herein.

23. (a) The defendant denies the allegations contained in paragraph 23(a) of Count II of the plaintiff's complaint.

(b) The defendant denies the allegations contained in paragraph 23(b) of Count II of the plaintiff's complaint.

(c) The defendant denies the allegations contained in paragraph 23(c) of Count II of the plaintiff's complaint.

(d) The defendant denies the allegations contained in paragraph 23(d) of Count II of the plaintiff's complaint.

(e) The defendant denies the allegations contained in paragraph 23(e) of Count II of the plaintiff's complaint.

(f) The defendant denies the allegations contained in paragraph 23(f) of Count II of the plaintiff's complaint.

WHEREFORE, the defendant denies that the plaintiff is entitled to the relief sought and further denies that the plaintiff is entitled to recover in any amount or form.

COUNT III

22. The defendant repeats and reavers its answers to paragraphs 1 through 17 of the plaintiff's complaint as if expressly rewritten and set forth herein.

23-25. The defendant neither admits nor denies the allegations contained in paragraphs 23 through 25 of Count III of the plaintiff's complaint for the reason that said allegations do not pertain to this defendant.

COUNT IV

26. The defendant repeats and reavers its answers to paragraphs 1 through 17 of the plaintiff's complaint as if expressly rewritten and set forth herein.

27. The defendant neither admits nor denies the allegations contained in paragraph 23 27 of Count Iv of the plaintiff's complaint for the reason that said allegations do not pertain to this defendant.

COUNT V

28. The defendant repeats and reavers its answers to paragraphs 1 through 17 of the plaintiff's complaint as if expressly rewritten and set forth herein.

29-31. The defendant neither admits nor denies the allegations contained in paragraphs 29 through 31 of Count v of the plaintiff's complaint for the reason that said allegations do not pertain to this defendant.

COUNT VI

32. The defendant repeats and reavers its answers to paragraphs 1 through 17 of the plaintiff's complaint as if expressly rewritten and set forth herein.

33. The defendant neither admits nor denies the allegations contained in paragraph 33 of Count VI of the plaintiff's complaint for the reason that said allegations do not pertain to this defendant.

COUNT VII

34. The defendant repeats and reavers its answers to paragraphs 1 through 17 of the plaintiff's complaint as if expressly rewritten and set forth herein.

35-37. The defendant neither admits nor denies the allegations contained in paragraphs 35 through 37 of Count VII of the plaintiff's complaint for the reason that said allegations do not pertain to this defendant.

COUNT VIII

38. The defendant repeats and reavers its answers to paragraphs 1 through 17 of the plaintiff's complaint as if expressly rewritten and set forth herein.

39. The defendant neither admits nor denies the allegations contained in paragraph 39 of Count VIII of the plaintiff's complaint for the reason that said allegations do not pertain to this defendant.

SECOND DEFENSE

By way of affirmative defense, the defendant says that if the plaintiff suffered injuries or damage, as alleged, such injuries or damage were caused by someone for whose conduct the defendant was not and is not legally responsible.

THIRD DEFENSE

By way of affirmative defense, the defendant says that the negligence of the plaintiff was greater than the alleged negligence of the defendant and that such negligence of the plaintiff contributed to its alleged damages and, therefore, the plaintiff is barred from recovery under M.G.L. Ch. 231, Sec. 85.

FOURTH DEFENSE

By way of affirmative defense, the defendant says that the plaintiff was guilty of contributory negligence and that the damages, if any, recovered by the plaintiff from the defendant should be reduced in proportion to the said negligence of the plaintiff in accordance with M.G.L. Ch. 231, Sec. 85.

FIFTH DEFENSE

By way of affirmative defense, the defendant says that the plaintiff, by its conduct and actions and/or the conduct and actions of its agents and servants, is estopped to recover any judgment against the defendant.

SIXTH DEFENSE

By way of affirmative defense, the defendant says that the plaintiff, by its conduct and actions and/or by the conduct and actions of its agents and servants, has waived any and all rights it may have had against the defendant and, therefore, the plaintiff cannot recover in this action.

SEVENTH DEFENSE

By way of affirmative defense, the defendant says that the plaintiff breached the terms and conditions of the agreement or contract alleged in the complaint and that therefore the plaintiff cannot recover.

EIGHTH DEFENSE

By way of affirmative defense, the defendant says that there was an increase of hazard within the control and/or knowledge of the plaintiff, and therefore the plaintiff cannot recover.

NINTH DEFENSE

By way of affirmative defense, the defendant says that the complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

TENTH DEFENSE

By way of affirmative defense, the defendant says that it was guilty of no negligence.

ELEVENTH DEFENSE

By way of affirmative defense, the defendant says that the plaintiff failed to mitigate its damages and, therefore, is not entitled to recover.

TWELFTH DEFENSE

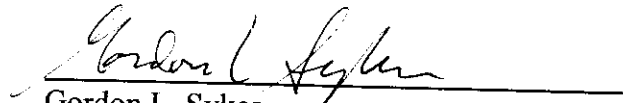
By way of affirmative defense, the defendant says that the action is barred by the applicable statute of limitations.

WHEREFORE, the defendant demands that the complaint be dismissed and judgment entered in its favor with the costs and disbursements of this action.

FIRE SYSTEMS, INC.

By its Attorneys,

MORRISON MAHONEY LLP



Gordon L. Sykes

BBO # 555580

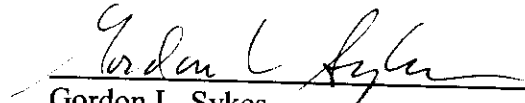
10 North Main Street

Fall River, MA 02720

(508) 677-3100

CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2004, I served the foregoing document upon the plaintiff by mailing a copy of same, first class mail, postage prepaid, to the attorneys of record, Erik Loftus, Esquire, Law Offices of Stuart G. Blackburn, P.O. Box 608, Windsor Locks, CT 060-96.



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